

SECOND REGULAR SESSION

SENATE BILL NO. 1169

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR JACOB.

Read 1st time January 27, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4124S.02I

AN ACT

To amend chapter 213, RSMo, by adding thereto one new section relating to age discrimination.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 213, RSMo, is amended by adding thereto one new section, to be known as section 213.056, to read as follows:

213.056. 1. An individual may not waive any age discrimination right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in subsection 2 of this section, a waiver may not be considered knowing and voluntary unless, at a minimum:

(1) The waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(2) The waiver specifically refers to rights or claims arising under this chapter;

(3) The individual does not waive rights or claims that may arise after the date the waiver is executed;

(4) The individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(5) The individual is advised in writing to consult with an attorney prior to executing the agreement:

(a) The individual is given a period of at least twenty-one days within which to consider the agreement; or

(b) If a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least forty-five days within which to consider the

agreement;

(6) The agreement provides that for a period of at least seven days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(7) If a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer, at the commencement of the period specified in subdivision (5), informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to:

(a) Any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(b) The job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organization unit who are not eligible or selected for the program.

2. A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, the Missouri commission on human rights, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 213.055 may not be considered knowing and voluntary unless, at a minimum:

(1) Subdivisions (1) to (5) of subsection 1 of this section have been met; and

(2) The individual is given a reasonable period of time within which to consider the settlement agreement.

3. In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subdivisions (1) to (7) of subsection 1 of this section or subdivisions (1) or (2) of subsection 2 have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to sections 1 or 2.

4. No waiver agreement may affect the rights and responsibilities of the Missouri commission on human rights to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Missouri commission on human rights.